

## **THE STATE OF CALIFORNIA'S GUIDANCE ON JOINT AGREEMENTS FOR THE NEIGHBORHOOD STABILIZATION PROGRAM**

The State of California's Substantial Amendment to the Annual Plan for the Neighborhood Stabilization Program (NSP) states that units of general local government may create joint agreements in order to reach the minimum dollar threshold established for these program funds. To assist cities and counties interested in this option, the Department of Housing and Community Development (HCD) is providing guidance on the suggested elements of a joint agreement for the purposes of the NSP. This guidance consists of information developed and provided by HUD to the directly funded entitlements, which HCD has modified to meet the State's NSP requirements. The following sections discuss when joint agreements may be applicable and their suggested elements.

### **Jurisdictions May Require a Joint Agreement To Meet the Program Requirements**

Jurisdictions participating in the State of California's NSP may need to consider a joint agreement with other jurisdictions in at least two instances. In the first instance, jurisdictions may require a joint agreement in order to be eligible to receive an NSP allocation from the State. In its allocation methodology for the NSP, HCD established a minimum threshold of \$1 million in order for jurisdictions to receive funds under Tiers 1 or 2. To reach this threshold, jurisdictions eligible to receive an allocation of less than \$1 million will need to enter into a joint agreement with contiguous cities and/or their county, providing these jurisdictions are also eligible to receive State NSP funds as listed under Tiers 1 or 2, and their combined allocations meet or exceed the minimum threshold.

The second instance in which a jurisdiction may need to enter into a joint agreement is when it has concerns about its capacity to administer the NSP funds. In this instance, HCD encourages the jurisdiction to consider entering into a joint agreement with either its county or other contiguous localities, providing they are eligible for a State NSP allocation. A joint agreement with an entity having a larger allocation, such as a county or large community, may help provide a smaller unit of general local government with the expertise or personnel support needed to carry out the NSP-funded activities.

### **Acceptable Types of Joint Agreements for the State NSP**

For the purposes of the State of California's NSP, HCD will accept the following types of joint agreements:

1. City/City Joint Recipients within that same county (i.e., two or more contiguous cities); or

2. City/County Joint Recipients (i.e., a county and one or more eligible cities located within the same county).

Two or more contiguous jurisdictions (cities) that are eligible to receive an NSP allocation from the State and are located in the same county may ask HCD for approval to implement a joint community development and housing assistance program for purposes of the NSP. For purposes of the State's NSP, "contiguous jurisdictions" represent jurisdictions that are located within the boundaries of the same county.

All members to the joint agreement must be eligible to receive an NSP allocation from the State under Tiers 1 or 2. In addition, one unit of general local government must be designated as the lead entity amongst the group. When multiple units of general local government enter into a joint agreement, the lead entity becomes the direct grant recipient. The other entities become subrecipients. The maximum grant amount is the sum of the amounts allocated by the State NSP for the individual cities and/or county. The lead entity must execute the State's NSP grant agreement by way of a joint application to be accompanied by an executed joint agreement. Consistent with HUD regulations, 24 CFR 570.308, the lead entity must assume responsibility for administering the State NSP grant on behalf of all members in compliance with applicable program requirements. The citizen participation process must include citizens of all jurisdictions participating in the joint NSP, not just those of the lead entity.

### **Executing a Joint Agreement**

HCD will consider accepting a joint agreement for the State's NSP only if it is signed by the chief executive officers of all participating local governments. Because time is of the essence, jurisdictions should negotiate joint agreements and submit them to HCD as soon as possible. A joint request will be considered accepted unless HCD otherwise notifies the lead agency within 30 days following submission of the joint request and an executed cooperation agreement meeting the requirements specified below. Upon receipt of a joint agreement, staff will conduct a review and notify the lead agency if there are any problems or concerns with the agreement. Applicants are encouraged to submit their joint agreements as soon as possible so that there will be time to correct any deficiencies discovered in the review process. Upon the State's acceptance of the joint agreement and the subsequent submission of a successful joint grant application, the participating units of general local government become a part of the lead entity's program for purposes of program planning and implementation for the lifetime of the State NSP grant.

Existing cooperation agreements (e.g., Memoranda of Understanding and/or Joint Power Agreements) governing regular CDBG funding between units of general local government or for other purposes will not be acceptable for the

State NSP. Certain provisions in existing cooperation agreements that govern 2008 CDBG funding may be inconsistent with parts of the Housing and Economic Recovery Act of 2008.

### **Requirements for Joint Agreements**

All cooperation or joint agreements must meet the following standards. HCD will review all joint agreements for compliance with this list. Failure to comply with any of the following elements will result in denial of the joint request:

1. The governing body of the lead entity (applicant) and the governing bodies of all the cooperating units of general local government must authorize the agreement.
2. The chief executive officer of the lead entity and the chief executive officer of each unit of general local government must execute the agreement.
3. The agreement must be accompanied by a legal opinion from the lead entity's counsel that the terms and provisions of the agreement are fully authorized under State and local law and that the agreement provides full legal authority for the lead entity.

Note: If the lead entity does not have such authority, the legal opinion must state that the participating jurisdiction has the authority to undertake, or assist in undertaking, essential community renewal and lower income housing assistance activities. A mere certification by the lead agency's counsel that the agreement is approved as to form is insufficient and unacceptable.

The legal opinion should be a separate document on the letterhead of the attorney.

4. The agreement must state that it covers the State NSP requirements.
5. The agreement must provide that the lead entity is responsible for ensuring that NSP requirements (such as program income or rent affordability) are complied with after grant closeout.
6. The agreement must provide that NSP program income will belong to the lead entity's NSP even if it is generated from activities undertaken within or by a cooperating local jurisdiction.
7. The agreement must provide that it shall remain in effect until the State NSP funds and program income received are expended and the funded activities completed.

8. The agreement must provide that the participating units of general local government or the lead entity cannot terminate or withdraw from the cooperation agreement while it remains in effect.
9. The agreement must contain a provision obligating the cooperating units of general local government or lead entity to take all actions necessary to assure compliance with the certification required by section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 109 of Title I of the Housing and Community Development Act of 1974, and other applicable laws.
10. The agreement must contain a provision prohibiting NSP funding for activities in, or in support of, any cooperating unit of general local government that does not affirmatively further fair housing within its own jurisdiction or that impedes the lead entity's actions to comply with its fair housing certification.
11. The agreement must expressly state "that the cooperating unit of general local government has adopted and is enforcing:
  - a) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
  - b) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location, which is the subject of such non-violent civil rights demonstrations within jurisdictions."
12. The agreement may not contain a provision for veto or other restriction that would allow any party to the agreement to obstruct the implementation of the approved State NSP application during the period covered by the applicants' NSP agreement with the State.
13. The agreement must contain language specifying that, pursuant to 24 CFR 570.501(b), the unit of local government is subject to the same requirements applicable to subrecipients, including the requirement of a written agreement as described in 24 CFR 570.503.
14. The agreement must provide that the participating units of general local government agree to satisfy all requirements of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), and that for each project assisted with NSP funds they will designate one of the participating units of general local government as the lead entity for compliance purposes.

## **ADDITIONAL INFORMATION**

### **Subrecipient Agreements**

The execution of joint or cooperation agreements between a lead agency (grantee) and a participating unit of general local government that the lead agency serves itself does not satisfy the requirement for a written subrecipient agreement required by HUD regulations at 24 CFR 570.503. Where a participating unit of general local government carries out an eligible NSP-activity funded by the lead grantee, these entities are responsible for executing a written subrecipient agreement with the units of government containing the minimum requirements found at 24 CFR 570.503 before disbursing any NSP funds for any such activity or project. The subrecipient agreement must remain in effect during any period that the unit of local government has control over NSP funds and activities, including program income. The lead agency is to retain documentation in its file of any subrecipient agreement.

### **Alternative Approaches**

NSP grantees with capacity concerns may also wish to consider another alternative approach should they determine that a joint agreement approach is not feasible in their situation. A locality eligible under Tier 1 may apply for its grant and then enter into an agreement with another entity to administer its grant in whole or in part. Such agreements must comply with applicable program requirements. This approach does require advance State NSP acceptance; however, the grantee will still retain legal responsibility for ensuring that its grant is carried out in compliance with all program requirements. As a result, this approach does not relieve a grantee of its implementation and oversight responsibilities. Specific to Tier 2, if an eligible unit of general local government does not enter into a joint agreement, the sum of its allocation will revert to the county as outlined in Appendix A of the State's Substantial Amendment. A copy of the substantial amendment can be found at:

<http://www.hcd.ca.gov/fa/nsp/subamendment.html>